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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,205	12/12/2000	Kaoru Okuno	50212-174	1983

20277 7590 06/19/2003

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EXAMINER

HOFFMANN, JOHN M

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 06/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/734,205	OKUNO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John Hoffmann	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 3-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>xxx</u> | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 3-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention, there being no allowable generic or linking claim. Election was made **without** traverse in the paper of May 19, 2003. Art Steiner called on 02 June 2003 and indicated that Specie A was also elected - and such was omitted from the mailed paper.

### ***Specification***

The spacing of the words of the specification is such as to make reading and entry of amendments difficult. For example, see lines 17-18 of page 1: there is essentially no spacing between the words.

New application papers with readable spacing on good quality paper are required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clayton 5851259 in view of Blankenship 5059229.

Clayton discloses the invention substantially as claimed, but not the tube. Blankenship discloses using a muffle to prevent attenuation (see Abstract). It would have been obvious to alter the Clayton method by using the Blankenship furnace so as to prevent attenuation as disclosed by Blankenship.

The amount of heat applied continuously changes. For example, if the power applied to the preform was 50 kilowatts, after the first 12 minutes, the heat applied would be 10 kilowatt-hours, after 24 minutes, a total of 20 kilowatt-hours, and after 1 hour, the amount of heat would be 50 kilowatt-hours. One could express the total amount of heat applied so that it was in joules, BTU's, calories or any other unit of heat. Heat is equivalent to power multiplied by time.

As to the "without depending solely on the main heater" - there would be many other factors, such as any insulation, the rate flow of gas through 34, the amount of power inserted into the heater. As to the draw tension: see Clayton, col. 2, lines 66-67. As to changing the chromatic dispersion: such is deemed to be inherent.

Alternatively for the draw tension limitation: the claim refers: "to change a draw tension and thereby change a local chromatic dispersion". The "to" indicates that it is merely a purpose- there is no actual requirement that there be a change in the tension or dispersion. And it would be improper for the Office to interpret the claim as requiring that the change in heat results in any other change.

As to claims 2: gas is supplied via feature 34. As to the "at least one of" language: such language is very broad. It is somewhat in the form of a Markush limitation, however, there is no indication that there is a group which is consisting of only

the flow rate and composition. Since there is no indication that it requires both features, and there is no indication that the group of features is limited to those two members, it is improper for the Office to interpret the claims as being so limited. It is deemed that the broadest reasonable limitation for the limitation is that it is open to any other member: including the location of the preform. The location of preform is clearly changed. Proper Markush language includes: "of the group consisting of....and...." The MPEP gives more complete guidance.

Alternatively, it would have been obvious to shut off the gas flow (i.e. reduce the gas flow rate to zero once the process is over so as to save gas. The limitation of "to change the amount..." is a motivational statement that does not require any heat change.

Alternatively, there are gas flow rates and compositions being changed all over the world: the claim does not specify the rate of which gas of the composition of which gas is being changed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Keck, Onishi, French, Roba, Olshansky, Evans, Berkey (x2), Antos, Yamaguchi, Kurth, are cited as being relevant to the disclosed invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is 703-308-0469. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 703-308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7115 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

  
John Hoffmann  
Primary Examiner  
Art Unit 1731

6-17-03

jmh  
June 17, 2003